

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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BOBBY MARVIN COLLINS,

Petitioner,

v.

WARDEN CAROL HOLINKA,

Respondent.  
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ORDER

07-cv-130-bbc

Petitioner has filed a notice of appeal of this court's May 22, 2008 judgment dismissing his petition for a writ of habeas corpus under 28 U.S.C. § 2241. His notice of appeal is not accompanied by the \$455 filing fee. Therefore, I construe his notice to include a request for leave to proceed in forma pauperis on appeal.

Petitioner's appeal is not subject to the 1996 Prison Litigation Reform Act. See Walker v. O'Brien, 216 F.3d 626, 628-629 (7th Cir. 2000) ("the PLRA does not apply to any requests for collateral relief under 28 U.S.C. §§ 2241, 2254, or 2255"). Nevertheless, in determining whether a petitioner is eligible for indigent status on appeal under § 1915, the court must find both that the petitioner does not have the means to pay the \$455 fee for filing his appeal and that the appeal is taken in good faith. See 28 U.S.C. § 1915(a)(1)

and (3). I do not intend to certify that petitioner's appeal is not taken in good faith.

In determining whether a habeas corpus petitioner is eligible for pauper status financially, it is my practice to apply the formula set out in 28 U.S.C. § 1915(b)(1). Specifically, from the petitioner's trust fund account statement for the six-month period immediately preceding the filing of his appeal, I add the deposits made to petitioner's account and calculate 20% of the greater of the average monthly deposits or the average monthly balance in the account. If the 20% figure is more than the fee petitioner owes for filing his appeal, he may not proceed in forma pauperis. If the 20% figure is less than \$455, he must prepay whatever portion of the fee the calculation yields.

I cannot tell whether petitioner qualifies for indigent status on appeal because he has not submitted a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. Therefore, I will stay a decision on petitioner's request for leave to proceed in forma pauperis pending his submission of the necessary trust fund account statement.

#### ORDER

IT IS ORDERED that a decision whether petitioner may proceed in forma pauperis on appeal is STAYED. Petitioner may have until June 27, 2008, in which to submit a trust fund account statement for the six-month period beginning approximately November 27,

2007 and ending approximately May 27, 2008. If, by June 27, 2008, petitioner fails to submit the necessary trust fund account statement, I will deny his request for leave to proceed in forma pauperis on appeal for his failure to show that he is entitled to indigent status on appeal.

Entered this 6<sup>th</sup> day of June, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge